IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.650 OF 2007

Bombay Mercantile Co-operative
Bank Limited ...Petitioner

V/s.

Syed Mahir Hussain Rizvi & ors. ...Respondents

Mr.P.K. Rele i/b. Piyush Shah for Petitioner.
Mr.A.S. Mirza for Respondent No.1 & 2.
Ms.Seema S. Singh for Respondent No.3.

CORAM : V.M. KANADE, J.
DATED : 17th APRIL, 2007.

P.C.:

1. Heard the learned counsel appearing on behalf of the Petitioner and the learned counsel appearing on behalf of the Respondents.

2. Rule. Rule is made returnable forthwith by consent of parties.

3. The Petitioner is challenging the order passed by the Central Government Industrial Tribunal, Mumbai, dated 11th January, 2007, whereby the application which was taken out by the

Petitioner seeking amendment to the written statement was rejected by the Tribunal.

4. Grievance of the Petitioner is that the Petitioner had, by the said amendment, sought to incorporate ground challenging the jurisdiction of the Tribunal to hear and decide the dispute. By the said application, it was sought to be contended that the reference which was made to the Tribunal by the Central Government was not maintainable since the Appropriate Government was the State Government and not the Central Government. In support of the said application, reliance was placed on the judgment of this court in the case of **Bharat Co-operative Bank Ltd. reported in 2005 II CLR 223.**

5. The learned counsel appearing on behalf of the Petitioner has invited my attention to the impugned order and it is submitted that question of inherent lack of jurisdiction can be raised at any stage and therefore, the Tribunal ought to have allowed the application for amendment.

6. The learned counsel appearing on behalf of the Respondents submits that the reference had reached at the stage of final argument and therefore, the Tribunal was right in not entertaining said application.

7. In my view, the Tribunal has clearly erred in rejecting the said application. In the impugned order, it is stated that Judgment and order in the case of **Bharat Co-operative Bank Ltd.(Supra)** on which reliance was placed by the Petitioner, was challenged in the Supreme Court and SLP was pending and therefore, on that ground it was held that the order passed by this Court is not binding on the Tribunal. In my view, the said reason given by the Tribunal is patently erroneous. To say the least, the Tribunal has committed an error of law which is apparent on the face of record.

8. The impugned order is set aside. The application for amendment is allowed. The Tribunal is directed to permit the Petitioner to amend written statement in terms of draft amendment which is annexed to the application taken out by the Petitioner. Amendment to be carried within a period of four weeks and

thereafter, the Tribunal shall decide all issues including issue of jurisdiction as expeditiously as possible and in any case, within a period of three months. Rule is made absolute accordingly.

. Writ Petition is disposed of in above terms.

V.M. KANADE, J.